



From: Garyg Miller
To: Barbara Nann
Cc: Barbara Aldridge; Carl Bolden; Donald Williams
Subject: Re: Fw: Gulfco . . . Next Steps . . . (Atty Work Product)
Date: 07/22/2008 11:12 AM

Barb,

Regarding no. 3 below (land use), the current land use as per Freeport's zoning code is heavy manufacturing north of Marlin Ave and heavy waterfront south of Marlin. Neither of these allows residential dwellings, with the exception that a caretaker or security person employed on the premises may live there. I have a copy of the Freeport code and zoning maps if anyone wants to see them.

Regards,

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▼ Barbara Nann/R6/USEPA/US

**Barbara
Nann/R6/USEPA/US**

07/22/2008 10:47 AM

To Carl Bolden/R6/USEPA/US@EPA, Barbara
Aldridge/R6/USEPA/US@EPA, Garyg
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cc

Subject Fw: Gulfco . . . Next Steps . . . (Atty Work Product)

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----- Forwarded by Barbara Nann/R6/USEPA/US on 07/22/2008 10:50 AM -----

**"Mariani, Tom (ENRD)"
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07/22/2008 10:00 AM

To Barbara Nann/R6/USEPA/US@EPA
cc Mark Peycke/R6/USEPA/US@EPA, Sam
Coleman/R6/USEPA/US@EPA, Wren
Stenger/R6/USEPA/US@EPA, Benjamin
Lammie/DC/USEPA/US@EPA, Amy
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Product)



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Barbara -

Thanks for sending me the PRPs' more recent letter and AOC mark-up and also for talking through possible courses of action in light of: the PRPs' written positions, the referral of this matter to DOJ, and the likelihood that a work settlement and work completion here (if there can be one) would be a target for FY '09 rather than FY '08.

After reading more of the material, considering points Sam C made previously, and thinking about the issues you and OECA raised on our last call, several possibilities occur to me:

- 1) RD/RA draft CD - we certainly can finish preparing an rd/ra CD draft, built on the premises that the contemplated "removal" work is completed, and that the PRPs would sign up ultimately for whatever the ROD remedy might be. If Program would like this done and all are willing to spend the resources to take this course, we can do it. It can't hurt anything. The biggest drawback, though, is that I don't see how sending another draft document will help, given the Agency's description of how the PRPs have treated and characterized the last work document EPA sent these PRPs;
- 2) Demand for payment of costs - it appears that no demand for past cost payment has been made to these PRPs, which also may mean that interest is not running on those costs. To get the PRPs' attention (and as a matter of good government) we could demand payment of all past costs and make clear that interest is running on the unpaid sums. Either EPA can do this or - since this matter is referred for litigation - I can send the demand;
- 3) Raise Land Use Issue - Both to encourage PRPs to reassess their approach here and as a matter of good government, I could write to PRPs, explain the matter has been referred for consideration of enforcement and that I have asked EPA to double check on likely future use of the site, noting that this decision is of course EPA's but that some information suggests the likely land use of the area is shifting from commercial to residential and that it might be well to account for that possibility while investigating the nature and extent of contamination;
- 4) Sue for past costs - This one would of course require review of the liability evidence referenced in our phone calls, but from what you and Mark P have said, it sound like we will have the evidence. Mark already flagged the down side on this one, though - the risk of attack on response action choices in court by dint of our losing our argument based on the statutory bar to pre-enforcement review.

#2 or #3 seem like they might be helpful here. What does the Region think?

I'll be back in office on Monday if you would like to discuss these further. Thanks. TM

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